

STATUS OF CLAIMS

Claims 1-20 are pending.

Claims 1-20 stand rejected by the Examiner.

REMARKS

Reconsideration of the present Application is respectfully requested.

Amendments to the Specification

The Examiner has objected to the drawings as failing to comply with 37 CFR 1.84(p)(5) because “they do not include the following reference sign(s) mentioned in the description: 700, 710, 740, 750, and 760.” Applicant has amended the drawings on the enclosed Replacement Sheet. Applicant respectfully submits that the drawings are now in compliance with the Examiner’s request and respectfully requests that such objection be withdrawn.

The Examiner has also objected to the abstract “because it includes language which can be implied and legal phraseology throughout.” Applicant has amended the abstract and, therefore, respectfully requests that the Examiner’s objection be withdrawn.

Rejections based on 35 U.S.C. § 112

The Examiner has rejected claims 1 through 12 under 35 U.S.C. 112, second paragraph, “as being indefinite.” The Examiner has stated that “with regard to claim 1, the scope of the claimed invention is indefinite because it is unclear whether or not it is intended to encompass the combination of the support and the stretcher or the support alone.” Applicant respectfully disagrees.

Claim 1 is directed to a stretcher supporter which comprises an open frame and an adjustable lifting point connected to the open frame. It is apparent from the claim language that a stretcher is

not claimed, rather, reference to a “stretcher”, as an adjective for the word “support,” is included in the body of the claim as a functional limitation to define what the stretcher supporter supports. *See* MPEP 2173.05(g) “A functional limitation is an attempt to define something by what it does, rather than by what it is. . . There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper.” The MPEP further states that “a functional limitation is often used in association with an element, ingredient, or step of a process to define a particular capability or purpose that is served by the recited element, ingredient or step.” *Id.* The reference to a stretcher is used in association with the open frame to define the purpose or capability of the open frame, i.e., to provide for secure attachment of a stretcher to the open frame. Based on the foregoing, claims 1-12 are not rendered indefinite by their reference to a stretcher.

Rejections based on 35 U.S.C. § 102

The Examiner has rejected claims 1 and 2 under 35 U.S.C. 102(b) as being anticipated by Haley (U.S. Patent No. 2,589,803). Applicant respectfully disagrees.

Claim 1 reads as follows:

A stretcher supporter, comprising:
an open frame, wherein said open frame provides for secure attachment of a stretcher to said open frame;
an adjustable lifting point connected to said open frame, wherein said adjustable lifting point suspends said open frame and rotatably shifts to substantially balance said stretcher respective to said open frame.

The Examiner has failed to address all of the limitations found in claim 1, which have been underlined above for ease of reference. Moreover, Haley fails to disclose or teach at least the underlined limitations. Rather, Haley is directed to a suspended seat for use by dentists. Haley discloses the use of a saddle, such as a bicycle saddle, *see* column 4, lines 53-54, for use as a movable work seat. Haley does not teach or disclose the use of a *stretcher* supporter as disclosed by

Applicant. In fact, Haley does not contemplate the use of a stretcher or any device even arguably related to a stretcher, in conjunction with the dentist work seat described therein. As such, Haley fails completely to disclose anything related to that which is necessary to “rotatably shift” and “substantially balance” a stretcher. Therefore, Haley fails to disclose all of the limitations of claim 1, specifically, “wherein said open frame provides for secure attachment of a stretcher to said open frame” and “wherein said adjustable lifting point suspends said open frame and rotatably shifts to substantially balance said stretcher respective to said open frame.” Thus, Haley fails to teach or disclose each and every limitation found in claim 1; therefore, any rejections under 35 U.S.C. 102 (b) should be withdrawn.

In addition, the Examiner has cited to element 20 of Figure 6 of Haley as disclosing an adjustable lifting point. According to the specification, element 20 “passes through sleeve bearing 21 at the center of ‘body’ member 19 positioned between the two trucks 15 and 16 and is free to swivel on ball bearings 22 as shown.” There is no mention in the specification that element 20 is “adjustable” are required by claim 1.

For at least the foregoing reasons, Applicant respectfully requests that the rejection of claims 1 and 2 under 35 U.S.C. 102(b) be withdrawn. Applicant further submits that claims 3-12 are similarly distinguishable over the prior art of record, at least by virtue of their ultimate dependency from a patentably distinct base claim.

Rejections based on 35 U.S.C. § 103

The Examiner has rejected claims 3 through 12 and claims 13 through 20 under 35 U.S.C. 103(a) as being unpatentable over Haley in view of Pettit (U.S. Patent No. 3,780,663). The Examiner has stated that “with regard to claims 13 through 20, the method steps cited therein are inherent to the use of the device shown by the combination of Haley ‘803 and Pettit ‘663 in use with a stretcher.” Applicant respectfully traverses these rejections for at least the following reasons.

35 U.S.C. 103(a) sets forth in part:

[a] patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicant respectfully submits the cited references fail to teach or suggest at least each of the limitations of independent claim 13, either alone or in combination. Claim 13 reads as follows:

A method of balancing a stretcher supporter for a patient lifting device, comprising:
securely attaching a stretcher to an open frame of said stretcher supporter; and
adjusting a lifting point connected to said open frame, wherein said adjusting a lifting point suspends said open frame and rotatably shifts to substantially balance said stretcher respective to said open frame.

Neither Haley nor Pettit disclose the use of a stretcher supporter as claimed by Applicant. As discussed above, Haley is directed to a suspended work seat for dentists. More specifically, it is directed to a device used to assist a dentist in moving around his/her office. The device is not used to aid in the rotating and balancing of a patient on a stretcher.

Pettit is directed to "an ambulatory system which affords patients an opportunity to walk between selected points, without the assistance of another." *See* column 1, lines 32-34. Pettit teaches away from the use of a stretcher supporter as claimed by Applicant because it is directed to a device used to assist a patient in walking. In contrast to Pettit, Applicant's invention is directed to a device and method for patients in a stretcher for whom walking is not possible or desirable.

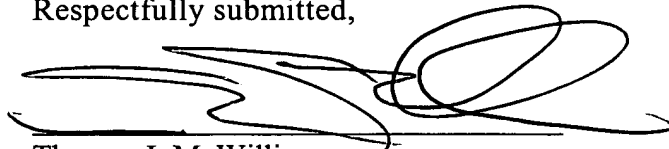
Therefore, the references cited by Examiner, either alone or in combination, fail to teach Applicant's invention. Applicant further submits that claims 4-20 are similarly distinguishable over the prior art of record, at least by virtue of their ultimate dependency from a patentably distinct base claim.

CONCLUSION

Wherefore, Applicant believes that all outstanding grounds raised by the Examiner have been addressed and respectfully submits the present case is in condition for allowance, early notification of which is earnestly solicited. Should there be any questions or outstanding matters, the Examiner is cordially invited and requested to contact Applicant's undersigned attorney at his number listed below.

Date: 9/29/05

Respectfully submitted,



Thomas J. McWilliams
Reg. No. 44,930
REED SMITH LLP
1650 Market Street
2500 One Liberty Place
Philadelphia, PA 19103
Phone 215.851.8100
Fax 215.851.1420

Attorneys for Applicant